IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

SA.No. 784 of 1994()

AS.95/1992 of DISTRICT COURT, THRISSUR
OS.607/1989 of MUNSIFF COURT,CHAVAKKAD

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APPELLANT/APPELLANT/PLAINTIFF:

NARAYANAN, S/O.VAZHAPPILLY KUMARAN,
KIZHAKKUMMURI VILLAGE AND DESOM,
THRISSUR TALUK.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS/RESPONDENTS/DEFENDANTS:

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1. SULOCHANA, W/O.VALIAPURAKKAL THOTTUPURA CHANDRANGADAN, NATTIKA VILLAGE AND DESOM, CHAVAKKAD TALUK, THRISSUR

2. SANTHOSH, S/O.VALIYAPURAKKAL THOTTUPURA CHANDRANGADAN, NATTIKA DESOM AND VILLAGE, CHAVAKKAD TALUK, THRISSUR.

BY ADV. SRI P.VIJAYABHANU

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A.NO. 784 OF 1994

Dated 19th July 2007

J U D G M E N T

Plaintiff in O.S.607 of 1989 on the file of Munsiff court, Chavakkad is the appellant. Defendants are respondents. Appellant instituted the suit seeking a decree for permanent prohibitory injunction restraining respondents from trespassing into the plaint schedule property. Appellant purchased the property as per Ext.A4 registered sale deed dated 20/10/1989 and instituted suit on 27/10/1989 on the allegation that while he attempted to fill up the marshy land respondents obstructed the same. It is clear that within ten days of the purchase of the property, suit was filed claiming that he has been in possession of the property and respondents attempted to trespass into the plaint schedule property. Respondents contended that plaint schedule property forms part of the property which was mortgaged under Ext.B1 by PW2, the assignor of the appellant. Identity of plaint schedule property was also

disputed. A commission was appointed. Commissioner submitted Ext.C1 report and Ext.C2 plan. Appellant was examined as PW1. His assignor was examined as PW2. Another witness was examined as PW3. Exts.A1 to A8 were also marked. Advocate Commissioner who submitted Ext.C1 report was examined as DW1. Ext.B1 was also marked. Learned Munsiff on the evidence found that plaint schedule property as demarcated by the Commissioner in Ext.C1 plan does not tally with the boundary shown in Ext.A4 assignment deed. Finding that appellant did not establish the identity of the plaint schedule property and the possession, suit was dismissed. Appellant challenged the decree and judgment before District court, Thrissur in A.S.95 of 1992. Learned District Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the appeal.

2. Appeal was admitted formulating following substantial questions of law.

> 1) When the plaint schedule property was shown to the Commissioner by plaintiff and defendants and no issue regarding the identity of the property was framed by court below,

whether dismissal of the suit for non identification of plaint schedule property is justifiable.

2) When Ext.B1 produced by respondents do not establish their case that plaint schedule property forms part of that property, whether the courts below were justified in dismissing the suit without granting a decree for injunction.

3. Learned counsel appearing for appellant and respondents were heard.

4. In the written statement itself respondents have disputed identity of plaint schedule property and contended that there is no such property as shown in Ext.A4 sale deed obtained by the appellant. In fact the Commission was taken out to identify the property. Commissioner submitted Exts.C1 report and C2 plan. Evidence of the Commissioner as DW1 establish that he has identified the plaint schedule property as shown by the parties as the disputed property and not with reference to Ext.A4 sale deed. Learned Munsiff and learned District Judge on appreciation of evidence found that plaint schedule property as identified by the Commissioner in Ext.C2 plan does not tally with the property covered under

Ext.A4. In such circumstances, it was found that appellant is not entitled to decree for injunction.

5. When a decree for perpetual injunction is sought for, it could be granted only if the property is identifiable and specific. No decree for injunction could be granted in respect of a vague property. Though Ext.A4 sale deed shows that appellant purchased 9 cents of property from PW2, the property so purchased is within the boundaries shown in Ext.A4. The Commissioner did not identify the disputed property as the property covered under Ext.A4. Unless that is identified and identity of plaint schedule property as the property purchased under Ext.A4 is established, appellant is not entitled to the decree for perpetual injunction sought for. As both courts have concurrently entered a factual finding that identity of plaint schedule property is not established and consequently appellant did not establish his possession, he is not entitled to the decree sought for. I find no merit in the appeal. Learned counsel appearing for appellant then submitted that dismissal of appeal may not be a bar to the appellant from seeking a proper decree after identification of the property. As the question

of title was not decided in the suit, dismissal of the suit will not effect the right of appellant to seek appropriate relief after proper identification.

Second appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.784 OF 1994

19th JULY 2007

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